

FINAL

Signed: 4/9/99

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN AL BISHOP**, on February 1, 1999 at
3:07 P.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. Al Bishop, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Dale Berry (R)
Sen. John C. Bohlinger (R)
Sen. Chris Christiaens (D)
Sen. Dorothy Eck (D)
Sen. Eve Franklin (D)
Sen. Duane Grimes (R)
Sen. Don Hargrove (R)

Members Excused: Sen. Bob DePratu (R)

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Martha McGee, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SJR 5, SB 290, 1/25/1999
Executive Action:

CHAIRMAN AL BISHOP announced the Committee would conduct
Executive Action on **SB 81**, the Chip bill on Wednesday, February
3, 1999, and also **SB 103**.

CHAIRMAN BISHOP said former **Rep. Susan Good** had requested to
speak to the Committee to see if they would want to have a
Committee Bill.

Susan Good, Representing an Anesthesiologist from Missoula. They want to ask for their consideration for a Committee Bill and the issue is ephedrine. This is a drug that has been classified on the schedule for controlled substances, which means according to the DEA in Denver, Colorado, that if there were a drug on this particular list, that drug does in fact have to be kept under lock and key. What happened with this particular anesthesiologist who brought her this concern, is that when a woman is experiencing very difficult labor, and her blood pressure bottoms out, he needs to administer this drug immediately. Sometimes it takes as long as 5 minutes, sometimes even more for them to be able find the nurse who has the key, get the key. Maybe she is on a coffee break, or what ever, sometimes this becomes problematic. He said he has cut cases way too close, and he feels that this is a real health issue. What he would like to do, would be to be able to have this drug available on his cart. Anesthesiologists have a cart where they have their drugs. These ampules are very small. He would like to be able to have some kind of language that would allow him to be able to access this drug a lot faster. He believes that this is truly a matter of life and death.

This would require a 2/3rds vote of the Public Health, Welfare and Safety Committee. She promises that she will do all the work, all the leg work, and make this as painless as possible for everybody. She has spoken with **Sen. Hargrove** and he has had a long standing interest in this issue. He said it was okay for them to proceed. She knows that this anesthesiologist, his name is **Greg Lind, MD., from Missoula**, and does a lot of OB deliveries, has spoken to some of the members of the Committee, and thus far they haven't run into any opposition, but they do need a 2/3rds vote. She promised again that she will do all the leg work.

CHAIRMAN BISHOP asked if this was something that the Committee would be interested in.

Questions from Committee Members and Responses:

SEN. HARGROVE said he carried the legislation that put ephedrine on the schedule in the last session. It is the basic building block for methamphetamine and if there is drug that is ephedrine, or combined with an inert substance they use for fillers, it is on the schedule, it should be there. There is no intent of course to deny the legitimate uses. He expects there must be other drugs that are controlled that have to be treated that way, he doesn't know how as long as the controls are maintained.

SEN. FRANKLIN said she was one of the folks that did speak also to **Dr. Lind**. It sounds like a legitimate issue and she sure would be open to it. She hasn't had any reason to question his perspective, its just that it is one perspective. She hasn't had the chance to talk to any other anesthesiologist, or people using ephedrine. She'd like to do just a little more questioning, but she is not closed to the idea at all. It sounds reasonable.

SEN. CHRISTIAENS questioned **Susan Good**, what other schedule for drugs have the same kind of access with an anesthesiologist on their cart.

Susan Good said she thought there was one other drug. Frankly this was new to her, the only one that **Dr. Lind** brought to her attention was ephedrine. But another one that was mentioned to her in her conversations with the Board of Pharmacy was "versed." But versed might be also in that same classification. Whatever action they take will be narrow, but comprehensive. If there are others that should be included, and she is not anticipating it at this time, they would all be under the same providence.

SEN. HARGROVE questioned **Susan Good**. He said they need to maintain some controls. He knows that she has investigated it quite a bit. It does seem to him, it was mentioned to him here, there must be other things that have to have that kind of immediate access that are still controlled and if they find out that really its already covered under the law, maybe they wouldn't have to go forward.

Susan Good said yes. That's why they made the call into the DEA (Drug Enforcement Agency) today, and they said yes. This is not federal purview, but a state law, and it needs to be changed within your state.

CHAIRMAN AL BISHOP said in order to save a lot of time, she might contact the members of this Committee, and ask them individually about this concern. If they have a Committee bill, it has to be out of the Committee by February 13, 1999. That's the deadline.

Susan Good asked if it was appropriate to have a vote taken today about whether or not they will permit such a process.

CHAIRMAN BISHOP said they would probably take a vote on Wednesday, February 3, 1999, if she contacts the members and if there is enough interest in this issue. She will find out.

Susan Good answered okay, and she just needs to come back on Wednesday, February 3, 1999.

CHAIRMAN BISHOP said yes.

HEARING ON SB 290

Sponsor: SEN. J. D. LYNCH, SD 19, Butte

Proponents: Sami Butler, R.N./ Montana Nurses' Association
Francis Guthrie, Advanced Practice Registered Nurse,
Owner, Nurse practitioner Practice, Montana City, in
North Jefferson County, Strawberry Mountain Clinic
Beda Lovitt, Montana Medical Association
Delores Warren, Private Citizen

Opponents: None

Opening Statement by Sponsor:

SEN. J. D. LYNCH, SD 19, Butte, Chief Sponsor of SB 290. Said this bill basically last session added chiropractors, gave to them the ability to give parking stickers to disabled persons. He is asking now, that the same Act provide for licensed advanced practice registered nurses which is the highest, he believes in their profession. In some cases, they are the primary health provider in some rural areas of Montana. These people are extremely well trained. They certainly have no intentions of using this privilege frivolously. By the same token, once they know a person is disabled, why in the world should that person have to go a doctor, who they have never seen before, just to get a disability permit for their disability to park. There are people present to testify.

It certainly ought not to be a turf battle between those presently giving the stickers, and those licensed advanced practical registered nurses. But it is rather a consumer issue. If this is the care provider that you a person chooses to have, and you are in fact disabled, why in the world, couldn't you get the sticker from the professional whom you chose to be your health care provider.

Proponents' Testimony:

Sami Butler, Registered Nurse, and representing Montana Nurses Association, said they want to thank **SEN. LYNCH** for introducing this bill for them. As **SEN. LYNCH** mentioned, currently only

physicians and chiropractors are allowed to determine if a patient meets the criteria for a special parking permit. They believe that this determination is within the scope of their practice of an advanced practice registered nurse (**APRN**). These nurses are registered nurses who have advanced education and provide primary health care in a variety of settings. The same group of nurses sees between 7,000 and 12,000 patients per week in the State of Montana. This is a very conservative estimate. The means APRNs see a lot of Montanans, many of whom are temporarily disabled, or permanently disabled. For many patients, as **SEN. LYNCH** described in the rural areas, an APRN often is the only healthcare provider that they see. They may live 50 to 100 miles from a physician, and it seems unnecessary to insist that these people would have to travel this amount of distance, as well as pay for a physician's office visit to get a paper signed saying they are eligible for a parking permit. They don't want to make it any harder for these patient with added expense and effort, and they ask the Committee to please streamline the process by supporting **SB 290**. She had handouts for the Committee and letters from two physicians, as well as a copy of the actual parking permit application.

EXHIBIT (phs25a01) EXHIBIT (phs25a02) E

EXHIBIT (phs25a03)

Francis Guthrie, Advanced Practiced Registered Nurse, and owner of a Nurse Practitioner Practice in Montana City, MT, in northern Jefferson County, Strawberry Mountain, said she stands in support of **SB 290**. She has experience with patients having their requests for special parking permit rejected on 2 occasions. She has seen the frustration, added expense, and restriction to access to appropriate care by the current language of the law. One personal example was the effort it took to get a parking permit for her mother. At age 86, she continued to strive for independence and maintain a more positive attitude towards her physical disabilities if she could get out of her apartment. She was on continuous oxygen and had severe pain in her knees and shoulders. The shoulder pain was aggravated when pulling the oxygen cart behind her and she had to use a cane to maintain stability on the other side. **Ms. Guthrie** said she was able to take care of some of her mother's healthcare needs throughout the years, with the exception of the parking permit. A special trip to the physician's office was required. Lynn Engberg, an APRN in Missoula, has written with similar experiences.

For the record she provides copies of a rejection letter from the Department of Justice, Motor Vehicle Division, physician's response letter where she practices, and Attorney General, Joseph Mazurek's reply.

EXHIBIT (phs25a04) EXHIBIT (phs25a05) EXHIBIT (phs25a06)

Beda Lovitt, Representing the Montana Medical Association said the physicians of the Association rise in support of **SB 290** Advanced, Practiced, Registered, Nurses certainly have the kind of training to make this determination, and the other kind of training to recognize, if they don't have enough. They would refer patients on to the Department of Justice, as well as a physician would refer patients on to a specialist. They urge the Committee's support for this bill as a consumer bill.

Delores Warren, Private Citizen said she is in support of **SB 290**, and she is in need of a special parking permit. She has emphysema and can't walk very far anymore. Three weeks ago she went to her Nurse Practitioner and asked her to complete and send in the form for this special permit. She was told she had to come back in a couple of days, because the doctor wasn't in, and he had to co-sign it. Then she had to make a special trip back to the office. She needs their support on **SB 290**.

Questions from Committee Members and Responses: None

{Tape : 1; Side : A; Approx. Time Counter : 13}

Closing by Sponsor:

SEN. J. D. LYNCH said it is common sense consumer bill. He applauds the Montana Medical Association for endorsing **SB 290**. It just makes common sense.

SEN. CHRISTIAENS said that one of the things that he sees is they have different groups coming in that will be care givers. Are there other groups they should be thinking about at the same time? He certainly doesn't oppose taking action the bill today, but he sees them coming back in 2 years, on one or two additional groups of folks, who will want to do the same thing.

SEN. FRED THOMAS said perhaps they could refer that question to one of the Interim Committees so they could examine that.

CHAIRMAN BISHOP said they were opposed to a laundry list, but he supposed they could word the bill somehow.

Motion/Vote: **SEN. FRANKLIN** moved that **SB 290 DO PASS**. Motion carried unanimously.

HEARING ON SJR 5

Sponsor: SEN. JON TESTER, SD 45, Choteau, Liberty and Hill
Counties

Proponents: Irvin Hutchinson, Legacy Legislature, Chester
Verner Bertelsen, Montana Senior Citizens'
Association
Frank Cody, Deputy Insurance Commissioner,
State Auditor's Office
Lyla Knutson, AARP, American Association of
Retired Persons
Jim Smith, Montana State Pharmaceutical
Association

Opponents: None

Opening Statement by Sponsor:

SEN. JON TESTER, SD 45, Choteau, Liberty and Hill Counties said before them they have **SJR 5**. He appreciates the way this Committee operates and hopefully this bill will go through in a similar manner. Basically **SJR 5** is quite simple. It urges the Congress and the Executive Branch of the Federal Government to require coverage of the cost of long-term care and prescription drugs run through the Federal Medicare Program. It follows that same lead all the way through the resolution as the title suggests with one exception. Also to eliminate fraud and abuse and give Medicare the right to competitive bidding in purchasing of prescription drugs and other supplies. On Line 29 and 30 of Page 1, they would request that be deleted. The reason for that is it is their concern that the Medicare Program may only do half of what they want in that sentence, and that is to remove the funds from Medicaid. They felt as a safety net to remove that sentence because it would be a total disaster if Medicare removed from the Medicaid Program, and then did not follow up with placing the long-term care and prescription drugs under the Medicare Program. That's basically it. There will be some testimony, and he will be more than happy to answer questions.

Proponents' Testimony:

Irvin Hutchinson, Legacy Legislature, Chester, said he wrote the resolution that was introduced to the Legacy Legislature. It was passed by the Legacy Legislature and given a priority rating. So the Committee might know a little bit more about where he comes from. He is a member, one of eleven members appointed by the Governor to the Governor's Aging Advisory Council.

For 4 1/2 years, he has been an insurance counseling assistant volunteer for Medicare, which means if people have a question about Medicare and they come to him, he can either tell them an answer or he can look it up, or he can call and get the answer. He has been on the Liberty Council on Aging for about 10 years. In addition to that he plays clarinet with band that plays in nursing homes, retirement centers and retirement homes, senior citizens birthday parties. They play 2 to 3 times a week. He's boring them with that information to let the Committee know that he has daily contact with grassroots senior citizens.

He invariably asks them what their opinions are, what their concerns are, what do they want, what do they need. He can tell the Committee with absolutely no fear, that he would be incorrect. The two biggest concerns of the senior citizens of Montana are: the sky rocketing prices for prescription drugs, and for nursing home care.

They were playing at a Senior Center in Highwood, MT. They got into conversations and one lady told him, that she and her husband were paying out \$500.00 per month for prescription drugs. He was shocked. Two years ago, when he was working on this the highest he'd heard was \$400.00 a month. He went to his local pharmacy. Please do not blame your local pharmacist for this problem, that is not where the fault lies. Every pharmacist he has talked about without exception, has thanked him for what he is doing. He has a letter from the Montana Pharmaceutical Association, thanking him for what he is trying to do. Please don't blame your pharmacist. They are with them, not against.

It's a known fact, case after case could be told. If the Committee has all day, and all night to listen to the people who buy prescription drugs in Canada, or Mexico for 1/3rd, sometimes down to 1/4th, of what the captive customers in the United States have to pay.

He has checked this out. This is the same medication, same strength, same bottle, same company. Everything identical, except the price.

Now he would like to go into nursing home care. It is not unusual to find people in nursing homes in Montana who are spending \$4,000 per month for care. He has a friend in Chester, whose wife is suffering from the effects of a stroke. In the last year, he told him he has paid \$40,000 for her nursing home care. Now he doesn't know about the Committee, but 2 or 3 years like that, he'd be bankrupt. Here again, do not blame the nursing home administrator. These are local problems, they affect local people, but they are really not even state problems.

They are national problems and must be solved on the national level. There is no other place to solve them.

Last summer, **SENATOR BAUCUS** and **CONGRESSMAN HILL**, both held hearings, or meetings, forums really, all over. He doesn't know how many each one held, but either 10 a piece, trying to get grassroots information as to what are we going to do - when 2010, and the baby boomers become eligible for Social Security, and Medicare Benefits. It is a real problem. However, there are solutions that are available. First **REPRESENTATIVE HILL** and then **SENATOR BAUCUS** had suggested ways of meeting this thing. If they can meet it on a bipartisan issue to try to find answers to problems. He surprised both **SENATOR BAUCUS** and **REPRESENTATIVE HILL**, when he told them 30 years ago, senior citizens receiving Social Security checks and confined to a nursing home could pay their entire nursing home bill, with a Social Security check every month and have money left over. Today the average Social Security check which is \$756.00 a month will not pay for one week of care in a nursing home. Yet in spite of this, we have those who say the COLA is too high. COLA is the Cost of Living Adjustment to their Social Security checks. If COLA was doing what they told it was going to do when it was passed, they wouldn't have this problem. But he doesn't know how the Commission would have afforded that.

Last Friday, **Allen Greenspan** was speaking on National TV, and he suggested that they cut the COLA some more. The COLA for 1999, is 1.3%. How far can you cut that? At the same time, there was an announcement made, that prescription drug prices in 1999 are going to go up 15%. What's happening is their holding down the ceiling on the senior citizens and lifting the floor, and they are caught in the middle. **PRESIDENT CLINTON** in his State of the Union Address mentioned both long-term care and nursing home prices. However, just a three line sentence - Save Social Security - is not going to do it by it's self. They have got to tackle this problem and treat it seriously, but solutions are available. He is glad this problem is finally getting attention, but he insists that any attempt to save Social Security, or Medicare is doomed to failure, unless it first addresses the problem of sky rocketing prices of nursing home care, and prescription drugs.

Verner Bertelsen, Representing the Montana Senior Citizens' Association, said there isn't a whole lot extra you can say any where you go, any group of seniors you are with will reiterate the same problems that **Irvin Hutchinson** has presented to the Committee. They just say, please pass this resolution and they hope they can see some action in Congress.

Frank Coty, Deputy Insurance Commissioner, State Auditor's Office said, they too support **SJR 5**. He doesn't have as much experience as **Irvin Hutchinson**. Hopefully some day he will, but being a Butte kid, he can tell them, as they say in Butte, it isn't rocket science to think that if they urge Congress to lower the costs of prescription and cut out fog, that it's a good thing. They support this bill.

Lyla Knutson, Representing AARP, and being a senior citizen. She thinks this is a great resolution, they urge the Committee to pass this legislation.

Jim Smith, Montana State Pharmaceutical Association, said just briefly if there is one thing that the Congress could do that would improve the health and well being of senior citizens in this country, it would be to add an out-patient prescription drug benefit to the Medicare Program. He started 5 years ago with the Association and was just astounded, flabbergasted, to realize there is not such a thing in Medicare right now. It desperately needs to be. One last comment, he thinks the Sponsor's amendment is very important to this resolution. If by some chance it were to fall on fertile ground back in Washington, D. C., he doesn't think they want to see one program get snookered by the other. So if they are going to move it forward, let's add the Sponsor's amendment.

Opponent's Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

SEN. JON TESTER said he would like to thank the Committee members for an outstanding hearing on **SJR 5**. He appreciates it greatly. Like he said in his opening, the resolution is really self-explanatory and it would be a great benefit to the senior citizens.

Discussion:

SEN. JOHN BOHLINGER, said this issue being straight forward, as it is, and an issue that came to them without any opposition, he doesn't think it would be a difficult decision for the Committee to make a decision to move this forward today.

CHAIRMAN BISHOP said before **SEN. BOHLINGER** makes a motion, he thinks this resolution will be held until Wednesday, February 3, 1999, and they will talk about it. They need an amendment, and **Susan Fox, Legislative Researcher**, will have it ready.

CHAIRMAN BISHOP said he contacted **SEN. BERRY** and **SEN. GRIMES**, regarding a trip to Austin, Texas, for the new members of the Public Health Committee. It is the Public Health Conference, in Austin, Texas, in March. **Chairman Bishop** asked **SEN. BOHLINGER** if he was on Public Health in the House.

SEN. BOHLINGER said he served on that Committee for 3 terms in the House.

CHAIRMAN BISHOP said he was a new member to this body, so he may be around for a while, so he might want to go to Austin, Texas. They will pay the airfare, 3 nights lodging, and most of your meals. He'd like to have somebody go so they could bring back to the Committee what ever is going on in the country with regard to public health that they don't know about.

SEN. THOMAS said they have a **Subcommittee on SB 103**. The Committee has finished its work. He doesn't think they are ready to report right now.

SEN. THOMAS said, they will be ready on Wednesday, February 3, 1999, if they want to act on **SB 103** on that day.

SEN BISHOP said they were going to take care of **SB 103 and SB 81** on Wednesday, February 3, 1999.

SEN. CHRISTIAENS said he would do his best to be ready to do **SB 209** on Wednesday, February 3, 1999, also.

SEN. BARTLETT asked a question to confirm that they do not have any bills scheduled for hearing on Wednesday, February 3, 1999.

CHAIRMAN BISHOP clarified that they have some house bills, and he is going to start to schedule those.

SEN. CHRISTIAENS said that he may ask the Committee to do a Committee Bill as well. This is in regard to the DPHHS act on laws that have been passed and never put into the codes. An example in the 1995, legislative session, he brought a bill forward regarding infectious disease working with mortuaries. To date, that has never been codified. They started rules hearings last October 1998, on this law. He is not real sure, but he would like the Committee to think about this. He will talk to the individual members. It seems to him, 4 years later, 3 sessions later, is much too long, without any excuse from the Department as to why it is taking so long.

SEN. THOMAS said maybe **SEN. CHRISTIAENS** would want to ask someone from the Department to come before the committee and explain why.

SEN. CHRISTIAENS said he would ask the Department and work with **CHAIRMAN BISHOP** on this.

{Tape : 1; Side : A; Approx. Time Counter : 1 - 35}

ADJOURNMENT

Adjournment: 3:40 P.M.

SEN. AL BISHOP, Chairman

MARTHA MCGEE, Secretary

AB/MM

EXHIBIT (phs25aad)